



January 12, 2000

Ms. Martha G. Sepeda
Acting City Attorney
City of Del Rio
P.O. Box 4239
Del Rio, Texas 78841

OR2000-0112

Dear Ms. Sepeda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131352.

The City of Del Rio (the "city") received a request for information pertaining to a federally funded grant program in which the city is in the process of purchasing properties that were flooded "to ensure that [the property owners] do not rebuild in the hazardous floodway again." You assert that the requested information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. You have submitted written comments regarding the asserted exceptions.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving a public information request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e).

As to the above-stated item (3), you do not state when the city received the request for information. The request document is dated November 8, 1999, and contains a notation of "Rec'd" by "HA" on November 10, 1999. We assume "HA" is an agent of the city. We thus conclude the notation is sufficient evidence that the city received the request on November 10, 1999. You inform us that the city had previously received the same request for

information, "but the applicant withdrew his application and has now reinstated the request." We assume the reinstated request was the request received by the city on November 10, 1999. As to the above-stated item (4), you have not provided this office with a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Thus the city did not comply with item (4).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A demonstration that the requested information is deemed confidential by law or implicates a third party's interest is a compelling interest sufficient to negate this presumption. *See* Open Records Decision No. 150 (1977). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Accordingly, you must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 131352

Encl. Submitted documents

cc: Mr. Arthur Lewis
131 Guyler Lane
Del Rio, Texas 78840
(w/o enclosures)